



Walter Radcliffe Esq; - - - - - Appellant.

Martha Fursman, an Infant of about
seven Years of Age, by *Peter* Respond^{ent}.
Burnasford Clerk, her next Friend }

The Respondent the Infant's CASE.



ON the 29th of September 1703, *Jasper Radcliffe Esq;* gave Bond in the Penalty of 900 *l.* to *Jane Davy*, conditioned to pay her 450 *l.* at 5 *l.* per Cent. per Ann. Interest, on the 30th of September 1704. And on the 19th of October 1703, gave another Bond to *Mary Andrews* in 500 *l.* to pay her 250 *l.* with Interest at 5 *l.* per Cent. on the 20th of October 1704. both which Sums of 450 *l.* and 250 *l.* were the Property of, and belonged to *Martha* the Wife of *Henry Mannaton* of *Harwood* in *Cornwall* Esq; and were taken in Trust for her, for her separate Use, exclusive of her said Husband.

7 October, 1703.

THE said *Jasper Radcliffe*, by his Will, gave 30 *l.* per Ann. to his Daughter *Martha Radcliffe*, the Respondent's late Mother, till she should marry or die; and if married with Consent of her Mother, he gave her 1400 *l.* for her Fortune, payable within twelve Months next after her Marriage; and by the same Will devised Real Estates of 20,000 *l.* Value, of which he was seised in Fee, to his Wife *Jane Radcliffe*, and to the said *Henry Mannaton* for Five Hundred Years; in Trust, for Payment of all his just Debts and Legacies, and made *Jasper Radcliffe* his Son, Executor and Residuary Legatee, and died in November 1704.

18 September,
1707.

THE said *Martha Mannaton*, who was Aunt to the Respondent's Mother, the said *Martha Radcliffe*, appointed by Deed, that immediately from and after her own Death, the said 250 *l.* and the Interest then due, should be paid to the said *Mary Radcliffe* for her separate Use.

IN 1716, the said *Henry Mannaton* died.

IN July 1721, the said *Martha Mannaton* his Wife, who had the equitable Right to the Money due on the said Bonds, and always had the Custody and Possession of them, died; having before her Death made her Will, and the said *Martha Radcliffe*, the Respondent's Mother, her Executor and Residuary Legatee.

THE

THE said *Jasper Radcliffe* left at his Death three Sons, *Jasper* the eldest, *Andrew* the second Son, and *Walter*, the present Appellant. The two first dying without Issue, and the last of those two in 1716, the Appellant in, and ever since that Year, as Heir to his said Father and Brothers, and as Executor to his Mother, who was the surviving Trustee of the said Term of Five Hundred Years, has been seised and possessed, and received the Rents, Issues, and Profits of the said Trust Estate, charged with the said 1400*l.* and with the said Bond-Debts, and all other Debts and Legacies of the said *Jasper Radcliffe* his Father; and hath been the proper Person to have paid the said Bonds, and the said 1400*l.* Legacy.

18 May, 1721.

THE said *Martha Radcliffe* was married to *Mr. John Fursman* Clerk, with Consent of her Mother; but by Articles dated and executed the Day before such Marriage, and to which the Appellant was a Party, as a Trustee for the said *Martha* his Sister, and executed the same; It was agreed between the said *Mr. Fursman*, and *Martha Radcliffe*, and the other Parties thereto, That the said 1400*l.* should be to the separate Use of the said *Martha* for Life, or as she should appoint; or otherwise, to the Issue of that Marriage, as directed by those Articles: and that whatever other real or personal Estate should come to the said *Martha* the Respondent's Mother, from the said *Martha Mannaton*, or otherwise, should wholly belong to her the said *Martha* the Respondent's Mother, and be to her separate Use, and should be vested in the said *Walter Radcliffe* the Appellant, and another Trustee, *Francis Gregor* Esq; to her separate Use, and for such Uses as she would by Will or Writing appoint.

AND the said *Martha*, the Respondent's Mother, by Will, dated the 19th of May 1723, after some particular Legacies, gave the Residuum of her personal Estate to the Appellant, and *Francis Gregor*, and other Trustees therein named, in Trust for the Child she then was big with, which was the Respondent; and made her Husband Executor, and died the 4th of June 1727, leaving the Respondent her only Child, and the said *Mr. Fursman* thereon proved her Will in the proper Ecclesiastical Court.

FRANCIS MANNATON Esq; Executor of the said *Henry Mannaton*, being satisfied that the said Bonds were originally the separate Property of the said *Martha*, the Wife of the said *Henry Mannaton* his Testator, on, or about the 19th of October 1728, declared the same under his Hand and Seal, and that they now belonged to the Respondent.

AND *John Towgood*, Administrator de Bonis non, of *Jane Davy*, Obligee in one of the said Bonds, by Writing, dated the 21st of January 1728; and *T. Mordaunt*, and *Mary* his Wife, whose Name was *Mary Andrews* before Marriage, the Obligee in the other of the said Bonds, declared by Writing under their Hands, dated the 13th of November 1728, That the said Bonds belonged to the Respondent by Title under the said *Martha Mannaton*, for whom the said *Jane Davy* and *Mary Andrews* were Trustees, and to whom they were near Relations.

APPLICATION was made to the Appellant, in behalf of the Respondent, for Payment of the said Legacy and Bonds; but the Appellant having made use of various Excuses to avoid, and at last having refused to pay the same, a Bill was exhibited against him in the Court of Chancery, in the Name of the Respondent the Infant, by her next Friend, to compel him to pay the same.

THE Bill charges, That the Appellant well knows, or believes that these Bonds were never paid; and charges, as a Demonstration thereof, that the Appellant himself, or some Person in his behalf, so declared or stated in some Case for the Opinion of some Council; but to conceal the Truth of such Case, he stated the same by way of *A. B.* and *C.* and other Letters; and in particular stated, that *A. B.* innuendo the said *Jasper Radcliffe* the Father, died about four Years after, giving two Bonds, innuendo, the said two Bonds, without Payment thereof: And further stated, That the eldest Son of the said *A. B.* died about seven Years after his Father, without paying any Part of the Principal, or Interest due on the said Bonds, and consulted whether Length of Time would not prejudice the Respondent's Right to the said Bonds. And the Bill charges, That no part of the Principal or Interest of the said Bonds has been paid, but still remains due and payable to the Respondent or in Trust for her.

AND

AND the said Bill required the Appellant more especially to answer, whether he doth believe that the Money due on the Bonds was ever paid; and if so, when, and by, and to whom; and whether it hath not been demanded or claimed of him, and at what Times, and how long since was the first of such Demands or Claims, and whether he then pretended the same was paid; and whether some, and what, Case was not stated by him, or on his Behalf touching these Bonds, and when, and to whom: And whether in such Case it was not stated, That *A. B.* meaning the said *Jasper* the Father, died without Payment thereof; and whether it was not stated, That the eldest Son of the said *A. B.* died seven Years after his Father, without Payment thereof, and that such Case might be set forth *in hac Verba & Literas*.

TO this Bill, which was filed the 15th Day of *April* 1729, the Appellant delayed from time to time to put in any Answer.

ON the 30th Day of *October* 1729, for further Delay, instead of answering a very material Part of the Bill, which, if answered, would have absolutely cut off the Appellant's unjust Pretence of Presumption that the Bonds were paid; the Appellant then put in a Demurrer to such Part of the said Bill as required him to set forth *in hac Verba & Literas*, the said Case stated by him for the Opinion of Council, or to what Council such Case was stated, or what Opinion was given thereon; alledging for Cause, that the Plaintiff was not intitled to any such Discovery, and that the Opinion was taken for the Appellant's own private Use and Satisfaction: and by way of Answer touching these Bonds, endeavours to set up other Claims of the Money due thereon, if the Bonds should be payable.

Note. The Bill no where requires any Discovery of the Council's Opinion.

3 *March* 1729. THE Demurrer was argued before the Right Honourable the Lord High Chancellor, who was pleased to over-rule the said Demurrer as to setting forth the said Case, but to allow the Demurrer as to all other Matters.

FROM this Order the Appellants have appealed.

BUT the Respondent humbly hopes, that the said Order will appear to be just, and that the same ought to be affirmed, among others, for the following Reasons:

First,

FOR that the said State of the Case is alledged to be touching Bonds, which are due to the Respondent, and payable by the Appellant: And it is conceived, that a Creditor is intitled in a Court of Equity to have a Discovery from the Debtor, whether the Debt be justly due or not, and for that Purpose to have a Discovery of what the Debtor hath said or writ, or done touching the same; which Discovery it is most reasonable to require, in a Case where the principal Defence relied on, is only a Presumption of Satisfaction arising from the Length of Time.

Secondly,

FOR that the State of the said Case was in an Affair wherein the Appellant was not merely concerned in his own Right, but was, and still is, a Trustee for the Respondent of the said Bonds, and a Trustee of the Estates which are liable to pay the same; and no possible Inconvenience can arise to the Appellant, from making such Discovery, but paying the Bonds, upon its appearing that they are really due.

FOR which, and other Reasons, the Respondent humbly hopes your Lordships will Affirm the said Order, and Dismiss the Appeal.

C. Talbot.
L. Stucley.

Walter Radcliffe Esq; --- Appellant.

Martha Furman, an Infant of about seven Years of Age, by her Guardian Peter Burford Clerk, Respondent.

THE

Respondent's CASE.

To be heard at the Bar of the House of Lords, on Wednesday the 10th Day of February, 1739.

C. Talbot.
L. Sturley.

